No. 16-1027

IN THE
Supreme Court of the United States

RYAN AUSTIN COLLINS,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

REPLY BRIEF FOR PETITIONER

Charles L. Weber, Jr.
ATTORNEY AT LAW
415 4th Street NE
Charlottesville, Va. 22902

Matthew A. Fitzgerald
Counsel of Record
Brian D. Schmalzbach
Travis C. Gunn
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, Va. 23219
(804) 775-4716
mfitzgerald@mcguirewoods.com

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INTRODUCTION

The Commonwealth mainly argues that the automobile exception should apply to any vehicle, anywhere. Given probable cause, says the Commonwealth, officers can search any vehicle and make any intrusion necessary to perform the search. Under that rule, it does not matter if the vehicle is in a driveway, behind a house, in a carport, in a garage, or even within a living space itself.

That proposed rule fails. In fact, this Court has rejected it before. In *Coolidge v. New Hampshire*, the Court ruled that the police committed an unconstitutional warrantless search of the defendant's car in his driveway. 403 U.S. 443, 479 (1971). Five justices refused to apply the automobile exception to validate the search. "If the police may, without a warrant, seize and search an unoccupied vehicle parked on the owner's private property, not being used for any illegal purpose, then it is hard to see why they need a warrant to seize and search a suitcase, a trunk, a shopping bag, or any other portable container in a house, garage, or back yard." *Id.* at 480 (majority op.); Petr. Br. 17. Yet the Commonwealth fails to address the *Coolidge* majority *at all*. Resp. Br. 38–41. In short, the Commonwealth's rule would carve a giant hole in the warrant requirement—the foundational Fourth Amendment protection for the home and its curtilage.

The Court crafted the automobile exception for vehicles during traffic stops and parked in public places. Accordingly, the vehicle cases the Commonwealth cites to support extending the automobile exception have nothing to do with the

home or curtilage or vehicles parked there. *Carroll, Husty, Chambers, Almeida-Sanchez, Cady, Cardwell, Thomas*, and *Ross* all arose at traffic stops, along public streets, or in public parking lots. Traffic stops, even hundreds of thousands of them, Resp. Br. 47 n.12, have nothing to do with this case.

Nor do the justifications for applying the automobile exception to traffic stops support warrantless intrusions into the curtilage of the home. "Consistent with . . . *Coolidge* and *Carney*, it is clear that the dual bases underlying the automobile exception . . . are inapposite to vehicles parked in a defendant's residential driveway." *Commonwealth v. Loughnane*, __ A.3d __, 2017 WL 5617657, at *8 (Pa. Oct. 22, 2017) (holding that the automobile exception does not apply in the defendant's driveway, within conceded curtilage).

Moreover, this Court does not recognize categorical exceptions to the warrant requirement for home searches based on what the police are searching for. Cocaine is illegal, quickly disposable, and readily seizable in public—yet to enter a home to look for it without a warrant requires a case-specific exigency. A motorcycle suspected of eluding the police weeks earlier deserves at least the same protection.

The judgment of the Supreme Court of Virginia cannot stand. This Court should hold that the automobile exception does not apply to vehicles found in the curtilage of the home.

ARGUMENT

I. A *per se* rule allowing warrantless automobile searches within the home and curtilage would thwart core Fourth Amendment protection.

Under the Commonwealth's proposed *per se* rule, probable cause alone allows searches of and for vehicles within the curtilage of the home (or the home itself, for that matter). This is a dramatic suggestion.

So, as an example: a traffic camera records an apparent instance of reckless driving. A police officer gets the owner's address from running the license plate in the video. To investigate who was driving the car at the time, that evening the officer goes to the address. There is a garage, and through its window he sees a car similar to the one on the video. To verify he has found the correct car, the officer proceeds into the garage. Once inside the garage, he sees an array of personal items in and around the car—things people reasonably expect to be private. He sees a stack of magazines with subscription information on the cover, a collection of woodworking and machining tools, and future Christmas gifts on a high shelf. Inside the car itself, he sees an employee ID with name and picture in the cup-holder, and parking receipts from a hospital parking lot. He also notices the car's registration is expired by two months.

The point is this: the officer has intruded into curtilage far beyond any implied license. There is probable cause, but no warrant. There is no case-specific exigency. If the Commonwealth's primary argument prevails, the automobile exception

authorizes this. (Under its backup argument, the same scenario is constitutional if this occurs in a carport next to the house, or in the back yard, instead of a garage). This is wrong. It runs afoul of the Fourth Amendment's core protection of the home and curtilage, under which warrantless searches are "presumptively unreasonable." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

In defending its rule, the Commonwealth cites the details of *this* case, which it views as reasonable—a daytime search that apparently took only a few minutes. But if the automobile exception applies, it is not limited to similar facts. For instance, the Commonwealth appears to concede that nighttime searches around homes are dangerous. Resp. Br. 33 n.8. Yet it offers no solution that even arguably could apply to most cases. *Id.* (citing only a rule that governs federal officers serving warrants). Nor does the Commonwealth deny that automobile searches can be violent and destructive. Petr. Br. 19–20.

A. Searches in curtilage require a warrant.

The core protection of the Fourth Amendment requires a warrant to search the home and curtilage. The Commonwealth says that an officer's view that he has probable cause is enough to justify an intrusion into the curtilage. Resp. Br. 27–29, 22 n.6 (urging that "ample probable cause entitled [Officer Rhodes] to access" inside curtilage). It is not.

First, searching a home requires a warrant. The warrant requirement stands among the "fundamental distinctions between our form of government, where officers are under the law, and the police-state where

they are the law." *Johnson v. United States*, 333 U.S. 10, 17 (1948). The Court has "consistently held that the entry into a home to conduct a search . . . is unreasonable under the Fourth Amendment unless done pursuant to a warrant." *Steagald v. United States*, 451 U.S. 204, 211 (1981) (absent consent or case-specific exigency).

Second, curtilage is "part of the home itself for Fourth Amendment purposes." *Oliver v. United States*, 466 U.S. 170, 180 (1984) (noting that "the curtilage . . . warrants the Fourth Amendment protections that attach to the home"); *id.* ("courts have extended Fourth Amendment protection to the curtilage"). As this Court recognized in *Florida v. Jardines*, "the identity of [the] home and what Blackstone called the curtilage" has "ancient and durable roots," and accordingly the curtilage "enjoys protection as part of the home itself." 569 U.S. 1, 6–7 (2013).

Curtilage protections matter. That is why the Court held that the warrantless search of a garage "adjacent to the dwelling" and "par[t] of the same premises" violated the Fourth Amendment. *Taylor v. United States*, 286 U.S. 1, 5 (1932). That also explains why the Court has only authorized the "warrantless search and seizure of garbage left for collection *outside* the curtilage of a home." *California v. Greenwood*, 486 U.S. 35, 37 (1988) (emphasis added). The Commonwealth provides no response to the cases recognizing that curtilage searches require warrants or case-specific exigent circumstances. Petr. Br. 12.

Third, an intrusion into the curtilage to investigate a vehicle is plainly a "search" under

Jardines. Resp. Br. 28–29. "When the Government obtains information by physically intruding on persons, houses, papers, or effects, a search within the original meaning of the Fourth Amendment has undoubtedly occurred." 569 U.S. at 5; *id.* at 19 (dissent) (agreeing that officers commit a Fourth Amendment search unless they stick "to the path that is typically used to approach a front door" and to "the same level of observation as would be expected from a reasonably respectful citizen.").

The Commonwealth counters that probable cause alone should be sufficient, even for vehicles within the curtilage. Resp. Br. 27–33; 21 n.6. But from *Carroll* onward, this Court's cases do not "require or suggest that in every conceivable circumstance the search of an auto even with probable cause may be made without the extra protection for privacy that a warrant affords." *Almeida-Sanchez v. United States*, 413 U.S. 266, 269 n.2 (1973).

No quantum of probable cause overcomes the warrant requirement within the home or curtilage. An officer's "[b]elief, however well founded, that an article sought is concealed in a dwelling house, furnishes no justification for a search of that place without a warrant." *Agnello v. United States*, 269 U.S. 20, 33 (1925); *accord Steagald*, 451 U.S. at 220–21 (requiring a warrant to search a third party's home, even when there is probable cause to believe the object of an arrest warrant is there).

The supposed horribles from enforcing the warrant requirement within the curtilage are a false alarm. Resp. Br. 28. First, an "officer observing the ongoing destruction of contraband inside the curtilage," *id.*,

would have a case-specific exigency to justify intruding. *E.g.*, *Kentucky v. King*, 563 U.S. 452, 460 (2011). Second, a traffic stop "onto the side of the road," Resp. Br. 28, will hardly ever occur in curtilage, particularly not the driver's (and in rare cases where it does, it could trigger hot pursuit principles anyway, as in *Scher*). Third, consent to search a vehicle within curtilage would naturally also invite access to that vehicle. *See Georgia v. Randolph*, 547 U.S. 103, 111 (2006) (courts construe consent in light of "widely shared social expectations").

B. *Coolidge* rejected the Commonwealth's primary argument, and this Court has not revived it since.

In addition to failing under first principles, the Commonwealth's *per se* rule does not survive precedent: the majority opinion in *Coolidge*.

The Commonwealth takes the same position rejected in *Coolidge*. Specifically, the *Coolidge* majority rejected the idea that a "warrantless seizure and search of automobiles [is] *per se* reasonable, so long as the police have probable cause." *Id.* at 479. And although the Commonwealth cites *Coolidge* multiple times, it never once addresses the *majority* opinion in that case. *See* Resp. Br. 38–41 (citing only the plurality and dissent).

The *Coolidge* majority refused to apply the automobile exception to the home and curtilage because "[i]f the police may, without a warrant, seize and search an unoccupied vehicle parked on the owner's private property, not being used for any illegal purpose, then it is hard to see why they need a

warrant to seize and search a suitcase, a trunk, a shopping bag, or any other portable container in a house, garage, or back yard." *Coolidge*, 403 U.S. at 480 (majority). Justice Harlan joined in that section of the opinion because he feared that "a contrary result in this case would . . . go far toward relegating the warrant requirement of the Fourth Amendment to a position of little consequence." *Id.* at 492 (concurring).

California v. Carney reaffirmed that the automobile exception does not apply everywhere, to all vehicles. 471 U.S. 386, 392 (1985). Rather, *Carney* identified two circumstances where the justifications for the automobile exception "come into play"—when a vehicle is "being used on the highways" and when it is parked "in a place *not* regularly used for residential purposes." *Id.* at 392–93. The curtilage of the home is by definition "a place . . . regularly used for residential purposes." *Id.* at 392.

Nor does *Scher v. United States* support the Commonwealth's position. The relevant part of *Scher* is just a few sentences long. Within those sentences that opinion leans on both hot-pursuit and search-incident-to-arrest principles. 305 U.S. 251, 254–55 (1938). *Scher* did not address (and had no reason to address) the stationary vehicle presented here, with no driver present. *Id.*; Petr. Br. 29. Unsurprisingly, the Commonwealth identifies no case that views *Scher* as establishing that the automobile exception applies within the curtilage. Nor did this Court itself find *Scher* controlling in *Coolidge*. *See* 403 U.S. at 459 n.17 (plurality) (characterizing *Scher* as a search-incident-to-arrest case).

The Commonwealth next contends that the four-page summary reversal in *Pennsylvania v. Labron*, 518 U.S. 938 (1996), establishes that warrantless vehicle searches in the curtilage are categorically reasonable. Resp. Br. 36–37. But no opinion at any level in *Labron* even mentions the word "curtilage." And the defendant in the underlying *Kilgore* case did not claim *any* Fourth Amendment rights in the property where his vehicle was searched—unlike Mr. Collins, who had undisputed Fourth Amendment rights. *See Commonwealth v. Kilgore*, 677 A.2d 311, 311 (Pa. 1995). Properly read, the summary reversal in *Labron* only confirms what should have already been clear—that the automobile exception is categorical when it applies. *Labron* does not expand or dictate its geographic scope.

C. Justifications for the automobile exception fade within the curtilage.

Even on their own terms, the justifications for the automobile exception lose much of their thrust within the curtilage of the home. *See Carney*, 471 U.S. at 392–93 (examining when the "justifications for the vehicle exception come into play").

Ready mobility. First, the mobility rationale does not support extending the exception. *Contra* Resp. Br. 42–44. Ready mobility is the general concern that "a moving automobile on the open road" will be "quickly moved out of the locality." *Almeida-Sanchez*, 413 U.S. at 269. Ready mobility peaks at a traffic stop (as in *Carroll*, *Chambers*, *Almeida-Sanchez*, *Thomas*, and *Ross*, all cases the Commonwealth relies on here).

In general, a vehicle parked in its owner's curtilage presents far less risk of quickly and permanently disappearing than the paradigmatic traffic stop or public parking lot. A car sitting in a public lot or by the roadside is in the middle of public travel. On the other hand, a car parked within the curtilage of its owner's home "is parked where the defendant lives and it will typically either remain there or inevitably return to that location." *Loughnane*, __ A.3d __, 2017 WL 5617657, at *8; *id.* (noting that "the concern about the inherent mobility of the vehicle does not apply, as the chance to search and/or seize the vehicle is not fleeting"). *See also State v. Hobbs*, 933 N.E.2d 1281, 1286 (Ind. 2010) ("[A] public parking lot is typically an interim destination, but a home's driveway is often the end of that day's travels."). Although probable cause may be "most often unforeseeable" at a random traffic stop, Resp. Br. 24, that is not true when police go to a specific address to search for evidence of a crime.

In any event, ready mobility does not excuse the warrant requirement within the home and curtilage. Drugs, for example, are readily mobile, yet police must secure a warrant even when they have probable cause to believe drugs are within the home. *See, e.g.*, *Vale v. Louisiana*, 399 U.S. 30, 34 (1970). The Commonwealth contends that drugs are only mobile like vehicles if they are *inside* a vehicle. Resp. Br. 23 n.7. But no car is necessary to destroy most illegal drugs: "drugs may be easily destroyed by flushing them down a toilet or rinsing them down a drain." *King*, 563 U.S. at 461. If a warrant or case-specific exigency is necessary to search for drugs inside the home or curtilage, the same should be true for vehicles found there.

Reduced privacy expectation. The reduced-privacy rationale does not support the Commonwealth's *per se* rule either. Pervasive regulation of vehicles reduces expectations of privacy where those regulations apply because police can "stop and examine vehicles" where those regulations are violated. *South Dakota v. Opperman*, 428 U.S. 364, 368 (1976). The Commonwealth ignores that those regulations generally do not apply within the curtilage. Petr. Br. 23–24 & nn.4–9. *See Loughnane*, at *9 ("[A]utomobiles are not subject to pervasive regulation while parked in a driveway, nor do police have frequent noncriminal contact with vehicles so situated. These bases for the reduced expectation of privacy only become applicable when the car is on the public streets.").

The Commonwealth also relies on the outdated rationale that "'travel[ing] public thoroughfares'" reduces expectations of privacy. Resp. Br. 44. But the automobile exception no longer rests on that rationale. *See Carney*, 471 U.S. at 392; Petr. Br. 25 n.10. In any event, "[t]he 'public nature of automobile travel' as it 'travels in public thoroughfares' plainly has no application to a car parked in a person's driveway." *Loughnane*, at *9.

Applying the automobile exception within the curtilage of a home would abandon critical judicial oversight of warrantless and intrusive home-and-curtilage searches. The justifications for the exception do not support such a sacrifice.

D. Providing clear guidance to police does not favor extending the automobile exception.

The Commonwealth suggests that this case pits a clear, easy, bright-line rule against an "unworkable" proposal by Mr. Collins. Resp. Br. 3. On the contrary, this case has a bright-line rule offered on each side. Collins' bright-line rule is the one this Court has long recognized as being at the "very core" of the Fourth Amendment. *Jardines*, 569 U.S. at 6. It is the rule that searches within the home and curtilage presumptively require a warrant, not just probable cause. *Agnello*, 269 U.S. at 33. The Commonwealth's rule, on the other hand, would undercut this basic rule by drawing a dangerous and broad exception to it.

The difference between the Commonwealth's proposed rule and Mr. Collins' is that the Commonwealth would permit officers, on probable cause alone with no warrant, to rummage through cars in the carport while the family is on vacation, or in the parking patio at nine p.m. on a Tuesday.

The warrant requirement is a rule officers already live with every day. Many Fourth Amendment "effects" commonly venture out into the public. But when they return to the home or within the curtilage, police know they need a warrant to come and search for them there. This is true for suitcases, briefcases, overcoats, even illegal drugs. When these objects are within curtilage, the police presumptively need a warrant to search them. There is no good reason to treat a vehicle differently.

The Commonwealth nevertheless insists that a different rule is necessary for vehicles because it would be difficult for "police officers to conduct case-by-case curtilage . . . determinations." Resp. Br. 49. This is not true, for several reasons.

First, officers already make curtilage determinations in the field *all the time*, and secure warrants as a result. The distinction between curtilage, which is "part of the home itself for Fourth Amendment purposes," and unprotected "open fields" has been blackletter law for police training purposes since at least 1984. *Oliver*, 466 U.S. at 180. Any officer tasked with investigating around homes should be well acquainted with the concept. Open fields are places police know they may roam freely, with or without probable cause. Curtilage, at least when entered to physically search for evidence, requires a warrant or case-specific exigency.

Even officers executing search warrants must already make decisions about the scope of curtilage. Whether the warrant uses the term "curtilage" or not, a warrant for a home typically includes what is within the curtilage, but not what is beyond it. "Ordinarily, a description in a warrant of a dwelling at a certain place is taken to include the area within the curtilage of that dwelling, so that it would cover a vehicle parked in the driveway." *Glenn v. Commonwealth*, 390 S.E.2d 505, 509 (Va. Ct. App. 1990) (quoting 2 Wayne R. LaFave, Search and Seizure § 4.10(c), at 322 (1987)).

Second, this Court has recognized that the extent of curtilage is "familiar enough" to be "easily understood from our daily experience." *Jardines*, 569

U.S. at 7. The Court has repeatedly described the curtilage in very simple terms: it is the area "immediately surrounding and associated with the home." *Oliver*, 466 U.S. at 180; *Jardines*, 569 U.S. at 6 (same).

Third, there is no evidence that police have found this rule unworkable in states that recognize the protected status of vehicles within the curtilage. For instance, this has been the law in Illinois for at least fifteen years, and in Georgia for twenty. *See, e.g.*, *Redwood v. Lierman*, 772 N.E.2d 803, 813 (Ill. App. 2002); *State v. Vickers*, 793 S.E.2d 167, 171 (Ga. App. 2016) ("[V]ehicles, like any other item or location within the curtilage of a residence, are not to be searched without a warrant, consent, or exigent circumstances."); *State v. O'Bryant*, 467 S.E.2d 342, 344–45 (Ga. App. 1996) (throwing out a search of a vehicle in the curtilage on the defendant's driveway). Yet the Commonwealth offers no evidence that the warrant requirement causes actual problems in this context.

The Commonwealth's administrability concerns thus provide no reason to depart from the ordinary rules that apply to curtilage searches.

II. The proper scope of the automobile exception cannot justify the search here.

Applying the proper rule to this case requires only a succinct Fourth Amendment analysis. *First*, was the motorcycle parked in curtilage? Yes, despite the Commonwealth's newfound opposition. *Second*, did Officer Rhodes conduct any Fourth Amendment searches? Yes. The Commonwealth concedes that

uncovering the motorcycle was a search, and under *Jardines* entry into the curtilage for that purpose was a search as well. *Third*, was there a warrant or warrant exception? No. The parties agree there was no warrant. And the only at-issue exception—the automobile exception—does not apply to searches into or within curtilage. Consequently, the judgment below should be reversed.

A. The motorcycle was in the curtilage.

Just as in *Jardines*, no remand on the issue of curtilage is necessary. *Contra* Resp. Br. 55–56.

As a threshold matter, the Commonwealth never disputed curtilage below, and has waived the point. In the Virginia courts, Mr. Collins argued that the motorcycle was within the curtilage. Pet. App. 8–9 (detailing the exchange of arguments in the trial court); Pet. App. 98, 100. On appeal, he argued that curtilage was undisputed, JA157, JA205, and drew no meaningful response from the Commonwealth.

Objecting to waiver, the Commonwealth cites only a single page of the record: JA239. Resp. Br. 55. That page presents no actual argument that the motorcycle was not on curtilage—and certainly it did not argue that any *Dunn* analysis is necessary. Instead, the sole relevant quote is: "Collins argues it is undisputed that Rhodes entered the curtilage of a home. . . . His assertion, however, overlooks the standard of review and the fact that the Court of Appeals assumed without deciding, for purposes of the appeal, that Rhodes entered the curtilage. . ." JA239. In the end, the Commonwealth obtained a broader ruling from the Supreme Court of Virginia by avoiding disputing

curtilage at that court. The issue is waived. *Steagald*, 451 U.S. at 209.

Moreover, the Commonwealth's failure to deny curtilage below was well-founded. The record is more than sufficient to hold that the motorcycle was within the curtilage. The critical facts are undisputed: the motorcycle was parked a car's width away from the side of the house, past its front wall, near a side door, surrounded by brick walls on three sides, on a concrete parking patio beyond the end of the asphalt driveway. Pet. App. 113–14. Those facts alone establish that the motorcycle was "immediately adjacent to a private home," *Kyllo v. United States*, 533 U.S. 27, 33 (2001), and as obviously curtilage as a "porch," the "side garden," or the area "just outside the front window," *Jardines*, 569 U.S. at 6.

The Commonwealth does not deny that driveways can qualify as curtilage. *See, e.g.*, *Robinson v. Commonwealth*, 639 S.E.2d 217, 221 n.1 (Va. 2007) (noting the Commonwealth's concession that "the driveway was within the curtilage of the [defendants'] home"). Instead, it says that some parts of some driveways may not be curtilage. Resp. Br. 55. That is beside the point. The parking patio in *this* case could not be any closer to the house. Pet. App. 30 n.4. And the Commonwealth does not deny that if the parking patio is not curtilage, then it is open field—which would mean an officer could linger there with no warrant *and* no probable cause, peering with "super-high-powered binoculars" through the side door into the recesses of the home. *Jardines*, 569 U.S. at 12 (Kagan, J., concurring).

In fact, the Commonwealth itself has contended that a car parked on the side of a house is within the curtilage. The Commonwealth frequently benefits from urging that vehicles are parked within curtilage, because if they are, then a warrant for the dwelling covers the vehicles too. *See Glenn*, 390 S.E.2d at 509 (stating that a warrant for a dwelling includes vehicles within the curtilage). Thus, the Commonwealth has argued that a car parked "on the side of [a] house" could be searched under a warrant for the residence because it was "on the curtilage." Brief for Commonwealth, 2001 WL 34823089, at *4–5, *15, *Wilkins v. Commonwealth*, 559 S.E.2d 395 (2002). Even while this case was pending, the Commonwealth argued (without reference to *Dunn*) that a "motor vehicle that was approximately twenty feet from the house" was within the curtilage. *Wells v. Commonwealth*, 2017 WL 4622140, at *1 & n.2 (Va. Ct. App. Oct. 17, 2017); *see also* Brief for Commonwealth at 31, *Wells v. Commonwealth*, No. 0201-17-3 (Va. Ct. App. July 17, 2017) ("Because Wells was inside the curtilage when the warrant was executed, he was within its scope.").[1] Under the Commonwealth's own view of the curtilage *there*, the covered motorcycle was plainly within the curtilage *here*.

B. Curtilage searches occurred.

Under *Jardines*, as well as privacy principles, Officer Rhodes clearly committed two Fourth Amendment searches. His warrantless investigation

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[1] This document is publicly available upon request from the Clerk of the Court of Appeals of Virginia. For the Court's ease of reference, it can be accessed at https://goo.gl/VqhWCo

"was accomplished through an unlicensed physical intrusion." *Jardines*, 569 U.S. at 7. That investigation was unlicensed in two respects.

First, Officer Rhodes had no license to remove the motorcycle's cover. The Commonwealth concedes this. "[N]o one is arguing that a visitor . . . is impliedly invited . . . to remove the cover off a vehicle parked in a private driveway and to inspect its license-plate and VIN information." Resp. Br. 21; *see also* Br. for Am. Motorcyclist Ass'n as *Amicus Curiae*, at 8 ("[M]otorcyclists do not expect the covers to be removed from their motorcycles by strangers.").

Second, the implied license only "permits the visitor to approach the home by the front path." *Jardines*, 569 U.S. at 8; *see also id.* at 19 (dissent) (agreeing that the license requires officers to "stick to the path that is typically used to approach a front door."). Officer Rhodes made no effort to approach the front door. Pet. App. 6, 88; JA18. He walked past the steps to the front door on his right, and then turned left and approached the motorcycle. Pet. App. 112, 114; Pet. App. 30 n.4 (Mims, J., dissenting) (noting that the motorcycle was "beyond the front perimeter wall of the house, past the front porch and front door").

Because "property concepts and privacy concepts" naturally "align," *Jardines*, 569 U.S. at 13 (Kagan, J., concurring), Officer Rhodes' intrusion to search the motorcycle also violated Mr. Collins' reasonable expectations of privacy. The motorcycle was not pervasively regulated on the private parking patio, and it was shrouded by a privacy-protecting cover. *See* Br. for Am. Motorcyclist Ass'n as *Amicus Curiae*, at 7 ("Motorcycle owners—particularly those

without garages—rely on covers to protect their privacy."). Because the covered motorcycle was within the protected sphere of the home, the expectations of privacy were reasonable there. *See Redwood*, 772 N.E.2d at 813 ("By parking a vehicle in the driveway or yard of one's home, one brings the vehicle within the zone of privacy relating to one's home.").

C. This case is not about exigent circumstances.

The Commonwealth also tries to salvage the searches in this case by looking outside the automobile exception. It suggests that Mr. Collins' parked, covered motorcycle searched when no one was home nonetheless presented case-specific exigent circumstances. Resp. Br. 25–26.

That separate and independent issue is beyond the scope of the question presented, which addresses only the automobile exception. Pet. i. And the Supreme Court of Virginia pointedly refused to rely on exigent circumstances. Instead, it asserted repeatedly that the "appropriate" and "proper" ground for decision was the automobile exception. Pet. App. 12, 14, 13–14 (refusing to assess exigent circumstances).

More broadly, this case should have no effect on existing exigency doctrine. Holding that the automobile exception does not apply to vehicles found in the curtilage would change nothing about how the Fourth Amendment handles actual emergencies. *Riley v. California*, 134 S. Ct. 2473, 2487 (2014) (exigency exists when "the police are truly confronted with a 'now or never' situation"). Exigency doctrine requires a case-by-case analysis. *Missouri v. McNeely*,

569 U.S. 141, 149–50 (2013). For instance, in *Scher* the officers pursued a suspected bootlegger from the public street into his garage, creating a hot-pursuit exigency. 305 U.S. at 255.

But certainly not *every* vehicle parked in the curtilage of its owner's home will create a case-specific exigency. *Contra* Resp. Br. 22. For instance, no exigency existed in *Coolidge*. 403 U.S. at 464 (plurality) (finding no case-specific exigent circumstances to justify a warrantless search where the car was in the defendant's driveway and he had been arrested and his family moved to another house). *See also Richards v. Wisconsin*, 520 U.S. 385, 393 (1997) (probable cause to search for illegal drugs in the home does not categorically create exigent circumstances for a no-knock entry).

III. The Commonwealth's novel backup proposal is unjustifiable.

In the alternative, the Commonwealth suggests that the automobile exception should apply in some parts of the curtilage but not others. The Commonwealth's backup argument asks this Court to apply the automobile exception, but only outside an "enclosed physical structure" in the curtilage. Resp. Br. 13.

That rule is unprecedented and unsupportable. This Court's cases do not support slicing the curtilage into pieces and eliminating protection for some parts of it.

First, the Commonwealth's concession that at least some parts of the curtilage merit protection from the

automobile exception is significant. For the first time in this case, the Commonwealth admits that limiting the automobile exception within the curtilage would "comport[] with Fourth Amendment principles," and "accord with existing Fourth Amendment case law." Resp. Br. 13–14, 49.

Second, once it is conceded that Fourth Amendment principles protect certain parts of the curtilage, there is no good reason for drawing the line where the Commonwealth would put it. The Commonwealth would protect garages, but apparently not carports, back yards, driveways, or parking patios of any configuration.[2]

It does not matter that common-law burglary during Blackstone's time required breaking into a building. Resp. Br. 52–53. Fourth Amendment curtilage exists for a different reason: to protect privacy. *See Jardines*, 569 U.S. at 7 (observing that curtilage "is where privacy expectations are most heightened"); *id.* at 13 (Kagan, J., concurring) (noting that "privacy expectations are most heightened in the home and the surrounding area").

Because of reasonable expectations of privacy, curtilage protections cover areas, not just buildings. There are countless places in this country where a person can stand on a driveway, within curtilage but outside any enclosed structure, and look directly into

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[2] The exact scope of the Commonwealth's rule is not clear. Would a carport qualify as a "fixed, enclosed structure"? Resp. Br. 49. Or a garage with the overhead door open? Adding this rule to the existing Fourth Amendment boundary at the edge of curtilage (a distinction police already must regularly make) would create new and unnecessary complications.

a side or back window, as close to the home as any front porch. *Jardines*, 569 U.S. at 6 (refusing to permit police to "enter a man's property to observe his repose from just outside the front window"); *id.* at 12 (Kagan, J., concurring) (supporting curtilage protection to prevent a person with binoculars from seeing "through your windows, into your home's furthest corners"); *United States v. Karo*, 468 U.S. 705, 714–15 (1984) (obtaining information that "could not have [been] obtained by observation from outside the curtilage" violated the expectation that homes enjoy "privacy free of governmental intrusion not authorized by a warrant").

The reasonable expectation of privacy protected by curtilage principles cannot survive if the automobile exception trumps it everywhere except within actual separate buildings. Whatever is within the curtilage is entitled to its protection. *Redwood*, 772 N.E.2d at 813 (holding that vehicles in curtilage are "within the zone of privacy").

Third, perhaps for this reason, the Commonwealth cites not one case actually adopting its gerrymandered proposal. That silence is telling.

On the contrary, this Court has recognized that land outside of enclosed physical structures is curtilage. *Coolidge* recognized that the warrant requirement applies equally to a "container in a house, garage, *or back yard*." *Coolidge*, 403 U.S. at 480 (emphasis added). *Jardines* addressed front porches, which are classic curtilage but seldom "enclosed" in the sense the Commonwealth seems to mean here. *Jardines* nevertheless held that the front porch "enjoys protection as part of the home itself."

569 U.S. at 6. *See also California v. Ciraolo*, 476 U.S. 207, 213 (1986) (yard is curtilage); *Dow Chemical Co. v. United States*, 476 U.S. 227, 239 (1986) (addressing whether "open areas of an industrial plant complex" qualified as "curtilage" and concluding it did not without requiring anything be inside of a building). Nor does *United States v. Dunn* require an enclosed physical structure like a garage—or even a fence—to qualify as curtilage. 480 U.S. 294, 301 (1987).

United States v. Santana, 427 U.S. 38 (1976) does not help the Commonwealth. Resp. Br. 50–51. *Santana* is an *arrest* case with a case-specific exigency (a hot pursuit) to boot. Even if *Santana* could be expanded to the search context and read as casting curtilage protections into doubt, that doubt could not survive *Jardines*. *Jardines* held that in *search* cases, the property principles ignored in *Santana* grant the front porch "protection as part of the home itself." 569 U.S. at 6.

Fourth, the import of the Commonwealth's suggestion is that people wealthy enough to have garages get far more Fourth Amendment protection than those with carports or who park beside or behind their homes. But even "the most frail cottage in the kingdom" is entitled to the protections of its surrounding curtilage, just as is "the most majestic mansion." *United States v. Ross*, 456 U.S. 798, 822 (1982). The Commonwealth's proposal gerrymanders straight through the middle class of this country, drawing a remarkably arbitrary line between otherwise very similar living arrangements.

CONCLUSION

As the *Coolidge* plurality urged, "there is a significant constitutional difference between stopping, seizing, and searching a car on the open highway, and entering private property to seize and search an unoccupied, parked vehicle not then being used for any illegal purpose." 403 U.S. at 463 n.20. For these reasons, the judgment of the Virginia Supreme Court should be reversed.

Respectfully submitted,

Matthew A. Fitzgerald
Counsel of Record
Brian D. Schmalzbach
Travis C. Gunn
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, Va. 23219
(804) 775-4716
mfitzgerald@mcguirewoods.com

Charles L. Weber, Jr.
ATTORNEY AT LAW
415 4th Street NE
Charlottesville, Va. 22902

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